

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES LEE HENDERSON,
TDCJ-CID #651826,

Plaintiff,

v.

SERGEANT SUTTON, et al.,

Defendants.

CIVIL ACTION NO. H-06-2311

MEMORANDUM OPINION AND ORDER

James Lee Henderson, an inmate of the Texas Department of Criminal Justice - Correctional Institutions Division (TDCJ-CID), brings this 42 U.S.C. § 1983 action against TDCJ-CID officials alleging that he was subjected to excessive force at the Estelle High Security Unit. This is the third time he has filed such a complaint. See Henderson v. Huntison, No. H-05-3160 (S.D. Tex. Sept. 16, 2005), citing Henderson v. Texas Department of Criminal Justice - CID, No. H-05-3006 (filed Aug. 8, 2005). Henderson has also filed an Application to Proceed In Forma Pauperis. The pauper's application will be granted, and Henderson's civil rights complaint will be dismissed as a duplicative and malicious action under 28 U.S.C. § 1915(e).

In the current action, Henderson sues three TDCJ-CID officers, Sergeant Sutton, Captain Huntison, and Lieutenant Roberts for an assault that is alleged to have occurred on April 15, 2005. He

raised the same claims against the same defendants in Nos. H-05-3006 and H-05-3160. The court dismissed the complaint in No. H-05-3160 after noting the fact that descriptions presented in that action were identical to those in No. H-05-3006.

An in forma pauperis prisoner's suit is subject to dismissal where the suit raises claims that are duplicative of a prior suit that is being pursued by the same prisoner in federal court. See Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir. 1993). It is apparent from the pleadings in the present action and in No. H-05-3006 that Henderson is delusional. See No. H-05-3006, Order for Special Report, Docket Entry No. 19. He is currently assigned to the TDCJ-CID Jester IV Unit, which is a facility used to treat prisoners with psychiatric problems. However, Henderson is definitely aware of the fact that he has previously filed a complaint against the same defendants. See Complaint filed in this action, Docket Entry No. 1, at 2. Henderson cannot continue to file his suits with impunity regarding fees and sanctions. See Patton v. Jefferson Correctional Center, 136 F.3d 458, 464 (5th Cir. 1998).

This prisoner civil rights action shall be dismissed sua sponte under 28 U.S.C. § 1915(e). Wilson v. Lynaugh, 878 F.2d 846 (5th Cir. 1989).

As noted above, Henderson has previously filed a prisoner civil rights complaint that was dismissed as malicious. The

current dismissal shall count as a second strike for purposes of 28 U.S.C. § 1915(g). Henderson is admonished that once he accumulates three strikes he may not proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

Henderson has filed a Motion to Appoint Counsel. The motion (Docket Entry No. 8) is **DENIED** because there is no absolute right to such appointment in a civil rights action, and the presence of counsel would serve no beneficial purpose in this case. Wendell v. Asher, 162 F.3d 887, 892 (5th Cir. 1998); Jackson v. Cain, 864 F.2d 1235, 1242 (5th Cir. 1989).

Conclusion and Order

Accordingly, the court **ORDERS** as follows:

1. The Application to Proceed In Forma Pauperis (Docket Entry No. 2) is **GRANTED**.
2. The TDCJ-CID Inmate Trust Fund shall deduct 20 percent of each deposit made to Henderson's account and forward the funds to the Clerk on a regular basis, in compliance with the provisions of 28 U.S.C. § 1915(b)(2), until the entire filing fee (\$350.00) has been paid.
3. The Motion for Court Appointed Counsel (Docket Entry No. 8) is **DENIED**.
4. This prisoner civil rights action, filed by Inmate James Lee Henderson, TDCJ-CID #651826, is **DISMISSED** as malicious. 28 U.S.C. § 1915(e)(2)(B)(i).

5. The Clerk is directed to provide a copy of this Memorandum Opinion and Order by regular mail, facsimile transmission, or e-mail to: (1) the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas 78711, Fax: 512-936-2159; (2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793, and (3) the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-strikes List.

SIGNED at Houston, Texas, on this 8th day of November, 2006.



SIM LAKE
UNITED STATES DISTRICT JUDGE